

**Economic Development,
Agriculture & Trade Committee**

HB 2102

Brief Description: Defining the meaning of enlarge with respect to water rights changes.

Sponsors: Representatives Haler, Grant, Newhouse, Hankins, Buri and Dunn.

Brief Summary of Bill

- Allows a ground water right amendment to change the purpose (rather than the manner) of use of the right.
- Specifies enlargement of the water right is based on an increase in the annual consumptive quantity of the right.

Hearing Date: 3/11/05

Staff: Caroleen Dineen (786-7156).

Background:

Generally, changes in the place of use, point of diversion, or purpose of use of a water right to allow the irrigation of additional acreage or the addition of new uses may be permitted if the change results in no increase in the "annual consumptive quantity" of water used under the water right. This quantity is defined as the estimated or actual annual amount of water diverted under the water right, reduced by the estimated annual amount of return flows. The quantity is to be an average based on the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

Various aspects of a ground water right may be modified with the approval of the Department of Ecology (DOE) if the modifications to the right will not impair other existing water rights, the wells under the modified right tap the same ground water body as wells under the original right, and the water right is not enlarged. If a well is replaced in the process, it must be properly decommissioned. The modified right has the same date of priority as the original right. For ground water rights, these modifications are "amendments" of the rights. *See* RCW 90.44.100.

The Washington Supreme Court has determined RCW 90.44.100 provides for a change in the manner of use but does not authorize a change in the purpose of use of a water right. *R.D. Merrill Co. v. Pollution Control Hearings Board*, 137 Wn.2d 118 (1999). The court in *R.D. Merrill*

described changes authorized by RCW 90.44.100 as changes that do not alter the original project or the quantity of water needed.

Summary of Bill:

The nature of the modifications to an existing ground water right that may be authorized under the formal procedure for amending existing ground water rights is revised. The purpose rather than the manner of use of a ground water right may be amended. In addition, enlargement of the water right conveyed by the original permit or certificate is based on the annual consumptive quantity of the right.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.